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3 JUN 1976

MEMORANDUM FOR: Director of Central Intelligence

FROM : John F. Blake
Deputy Director for Administration

SUBJECT : Response to EEO Advisory Panel on
"Administration of EEO Requirements
in Contracting and Procurement"

Sir:

1. The attached is, unfortunately, a victim of the transition between Mr. Colby and you.

2. To serve the record, I should think that you might wish to forward Mr. Malanick's paper to the Chairman of the EEO Advisory Panel. Mr. Malanick's paper addresses the problems in contracting and procurement, pointing up some concerns for following through on the recommendations made by [REDACTED]

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3. A suggested response to the Chairman of the EEO Advisory Panel is also attached.

[REDACTED]

John F. Blake

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Attachments

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Approved For Release 2002/05/07 : CIA-RDP79-00498A000500080015-2

Next 2 Page(s) In Document Exempt

Approved For Release 2002/05/07 : CIA-RDP79-00498A000500080015-2

8 JAN 1976

MEMORANDUM FOR: Deputy Director for Administration

SUBJECT : Administration of EEO Requirements in Contracting and Procurement

REFERENCE : Memo dtd 17 Dec 75 to DCI fm Chairman, EEO Advisory Panel, same subj.

1. This memorandum provides the Office of Logistics' (OL) comments on the reference.

2. Problems B.1 - B.5 describe a generic situation which is not generated by or unique to the Central Intelligence Agency (CIA). Countless articles in the Wall Street Journal and other publications have addressed the confusion existent in the Government-wide Equal Employment Opportunity (EEO) program and the inability of the Office of Federal Contract Compliance (OFCC) and the designated compliance agencies to perform inspections and monitor the enormous number of contractors doing business with the Federal Government. Recognizing that OFCC and its designated compliance agencies may not be performing all of the inspections or other monitoring of contractors that should be done, it should be noted that we do not have the resources to superimpose our own version of EEO enforcement on that of the Director, OFCC. Further, there is a question in the mind of the Office of General Counsel as to whether we have the authority to do so.

3. With regard to paragraph B.5, we have found through discussions with representatives of the Defense Supply Agency (DSA) and the General Services Administration (GSA) that "show cause" letters are issued to contractors when it is determined that a problem of noncompliance exists. Copies of the "show cause" letters are not distributed to other agencies. However, failure to correct problems discussed in the "show cause" letter could result in debarment, and notification of debarment is promulgated to all agencies.

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As we noted at our meeting with the EEO Panel, we might be able to arrange with GSA and DSA to advise us whenever a "show cause" letter is issued or withdrawn. Upon receipt of such information, we would then have to send copies of the "show cause" letter to each of our contracting officers. Notification of the cancellation or withdrawal of "show cause" letters would also have to be obtained and disseminated. However, informal discussions with Mr. Joe Hogan, Deputy Chief, Contract Compliance Division, DSA, and Mr. Ross Ballard, Deputy Chief of the Civil Rights Division, GSA, indicate that they do not feel that distribution of copies of the 400 to 500 "show cause" letters which are written by their agencies each year would be practicable because: (1) the great majority of their "show cause" cases would be cleared up by the time we received the information; (2) they would not, of course, apply to contractors who are not under the Department of Defense's (DOD) or GSA's compliance jurisdiction; (3) if a contractor does not correct the deficiencies cited in the initial "show cause" letter within the 30 days allotted, the hearing mechanism of OFCC is actuated; and during this somewhat lengthy process, there is a touchy legal question involving the concept of "due process," i.e., can the Government continue to deny him an opportunity to bid for Government business when he has not been found guilty? and (4) the majority of "show cause" actions result from unsatisfactory Affirmative Action Plans uncovered during the pre-award, on-site survey required for all contracts of \$1,000,000 or more - and we would therefore, automatically be made aware of a contractor's state of noncompliance whenever we requested such a survey.

4. In the absence of a precise definition by the EEO Panel of the term "spirit of the law," I question the statement in paragraph B.6 which reads: "We find that the Agency's weakness . . . spirit of the law." As we have stated in the past, however, we in OL are committed to the goals of the Agency's entire EEO program, not just to that part which falls in the area of contract compliance; and we welcome any suggestions for improvement.

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5. Paragraph B.7 is essentially accurate in that the primary objective of our industrial contracts is not EEO but the acquisition of a needed product or service. There are many staff officers assigned to monitoring technical performance, a substantial staff of Industrial Security Officers responsible for monitoring compliance with security requirements, and a sizeable staff to handle contract audit matters. The attention given by the Agency to these contract elements and the allocation of resources to monitor these elements has developed over time and is, in our opinion, consistent with good contract management. The review of debarment lists and obtaining certifications of EEO compliance from contractors is also required and will be continued.

6. Paragraph B.8 refers to a lack of sufficient written policy or procedure. The intent of Procurement Note No. 75 is that contracting officers notify the Chief, Procurement Management Staff (PMS), OL any time a response to an RFP indicates that the offeror has a "show cause" letter outstanding against him (see Attachment 6 to the Procurement Note) or, for that matter, any time a question concerning EEO compliance on the part of a contractor or prospective contractor arises (paragraph 5 of the Procurement Note). The Procurement Note could be revised to make the procedure more explicit; but the most effective implementation of policy will be achieved by discussion through such media as the Procurement Policy Panel meetings and spot-checking contract files. PMS/OL is already committed to this. With regard to the communication gap between Agency contracting officers, there can be no such gap since the contracting officers for the National Programs came from the OL career service. These officers attend all Procurement Policy Panel meetings and receive copies of all directives on procurement matters. Their contracts include the same boiler plate as Agency contracts. It is true, however, that their delegation of procurement authority flows directly from the Director of Central Intelligence rather than through the Director of Logistics (D/L). It is also true that contacts with DSA and other compliance agencies on National Program matters are not handled through Agency mechanisms.

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7. Paragraph B.9 mentions fragmentation of resources involved in administering EEO compliance requirements. Under the Agency's concept of decentralized procurement, responsibility for compliance with the EEO program in contractual actions rests with the contracting officers, as does authority to enter into contracts, to administer contracts, and to settle contracts. However, in Procurement Note No. 75 (revised), PMS has been designated as the referral point for any EEO problems encountered in the contracting process and, in addition, serves as the D/L's policy coordination and review arm for matters related to procurement. The subject of contracting with minority business enterprises gets into different boiler plate articles and different procedures. Our contracts do include the required clauses, and minority business enterprises are given an opportunity to compete equally with other contractors. Lists of minority business enterprises are provided to our Procurement Division as they become available.

8. The recommendations of the Panel are addressed by number as follows:

a. Recommendations 1 and 2 are acceptable if they are modified to recognize the exceptions provided in the Executive Order, such as, for contracts under \$10,000 and contractors with fewer than 100 employees. The Agency also must reserve the right to contract without regard to EEO when operational or security requirements dictate. We also have some problem with ascertaining how to mandate compliance with the "spirit of the law."

b. With regard to recommendation 3, we have already made a substantial effort to "beef up" our policy and procedures and will continue to undertake additional review and revision where necessary.

c. We concur fully with recommendation 4.

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d. On recommendation 5, the Director of Logistics, as Senior Contracting Officer for CIA, has the authority and responsibility for implementation of EEO contract administration. The day-to-day implementation is necessarily done by the contract teams with guidance and monitoring by PMS.

e. Recommendation 6 gets into the area of minority business, which we view as a subject separate and apart from EEO, but here again we are open to any suggestions anyone may have to offer.

9. In conclusion, we continue our commitment to the goals of EEO and, within the limits of our resources, will do our best to implement any recommendation approved by management.

10. We wish to express our appreciation to the Director's EEO Panel for their helpful thoughts and suggestions and commend them for their overall efforts.

/s/ Michael J. Malanick
Michael J. Malanick
Director of Logistics

Atts
Reference
Procurement Note No. 75

Executive Registry

75-10408

DDA 75-60861

17 December 1975

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT : Administration of EEO Requirements in Contracting and Procurement.

A. PURPOSE.

To determine the Agency's vulnerability in the area of EEO affirmative action in contracting and procurement.

B. PROBLEMS.

1. Upon investigation, we have found the Agency's contracting and procurement administration of equal employment in need of strengthening.

2. We further find that some of the Agency's deficiencies are inherent in the relationship to designated contract compliance agencies.

3. Designated contract compliance agencies have inadequate resources to monitor and investigate. Consequently, contractors doing business with the CIA may not receive periodic and timely examination. Total reliance on compliance agencies will therefore leave the Agency vulnerable in respect to its primary responsibility for the administration of EEO requirements in procurement of foreign and domestic contracts.

4. Coordination and communication between contract compliance agencies and the Office of Federal Contract Compliance (OFCC) is such that pertinent information, required by CIA contracting teams before finalizing contracts, is often lacking.

5. Notification is required of contract compliance agencies and OFCC when affirmative action plans are found to be unacceptable and a "Show Cause" notice is issued.

OL 5 6377

6. We find that the Agency's weakness in contract and procurement administration of EEO requirements is partly based on the absence of policy and procedure which go beyond the letter of the law to the spirit of the law.

7. In administering Agency contracts, EEO requirements receive less attention than the attention given to technical, security and other requirements. Heretofore, it has been sufficient only to review the debarment list and require "boiler plate" certification.

8. While there is legal authority housed in the "boiler plate" which enables the Agency to react to contractors receiving "Show Cause" notices, there is no written policy or procedure which would guide the contracting officers as to what action they are to take in the event of "Show Cause". We have been unable to identify an in-house contracting review mechanism that would resolve the communication gap between Agency contracting officers and National Programs contracting officers. Procurement Note 75 does not lay out the process by which certification statements are reviewed, confirmed or rejected, nor does it spell out who has the authority to do whatever.

9. We have found that contract authority, resources and responsibility for administering EEO requirements are fragmented. There is no policy mechanism aimed at involving minority entrepreneurs in the contracting and procurement cycle.

C. RECOMMENDATIONS.

The purpose of the following recommendations is to reduce potential vulnerability in the area of EEO affirmative action in contracting and procurement. We recommend to the DCI that serious effort be made to strengthen contract administration policy and procedures. Specifically:

1. That all contractors doing business with the Agency be in compliance with the letter and the spirit of the law outlined in Executive Order 11246 entitled "Equal Employment Opportunity".

2. That no contract relationship be initiated with contractors not in compliance with EEO contractual requirements.

3. That policy and procedures be established to govern the Agency's relationship with contractors who have unacceptable affirmative action plans and have been issued a "Show Cause" notice.

4. That the Director of Logistics be encouraged to continue the development of policy on EEO administration of all contracts let at the \$10,000 level or above.

5. That the authority, responsibility and resources for EEO contracting administration be centralized at an organizational level which insures implementation and accountability.

6. That the Agency institute affirmative action to maximize the opportunity of minority entrepreneurs to compete for prime and sub-contracts.



Chairman
EEO Advisory Panel

STATINTL

APPROVED:

William E. Colby

Date

21 NOV 1975

OFFICE OF LOGISTICS
PROCUREMENT NOTE NO. 75
(Revised 7 November 1975)

Equal Employment Opportunity
Under Agency Contracts

1. The purpose of this Procurement Note is to review the responsibilities of Agency Contracting Officers for Equal Employment Opportunity (EEO) compliance under Agency contracts. Except for Attachment 1 and 2 thereto, Procurement Note No. 75 dated 23 April 1974 is hereby rescinded.
2. The Government is placing continuing emphasis on the enforcement of EEO in procurement. The Secretary of Labor is responsible for administration of this effort and has established an Office of Federal Contract Compliance (OFCC) to carry out his responsibilities in this area. The OFCC has designated 17 agencies and departments as "compliance agencies" to ensure compliance on the part of Government contractors.
3. Although the Agency is not designated as a "compliance agency," it is responsible for obtaining through the appropriate compliance agency compliance with the rules, regulations, and orders of the Secretary of Labor with respect to its contracts. Compliance agencies have been designated by the OFCC by industrial category in accordance with the 1972 Standard Industrial Classification code manual of the Office of Management and Budget. Attachment 1 shows these assignments.
4. The Agency is required to include an EEO clause in each of its contracts except for those exempted under OFCC regulations. Generally speaking, the major exemptions apply to transactions of \$10,000 or under, work performed outside of the United States with workers not recruited in the United States, contracts with state or local governments, and certain national security contracts exempted by the Secretary of Defense. The EEO clause is provided in Section A, Article 20, ASPR 7-103.18, of the Agency General Provisions.

OL 5 5611

PROCUREMENT NOTE NO. 75
(Revised 7 November 1975)

5. The Agency has never received an EEO complaint under any of its contracts; and the likelihood of a complaint in the future appears small, considering the security classification of most contracts and the use of cleared personnel. Contracting Officers, nevertheless, are responsible for ensuring through the compliance authority of other agencies that their contractors are meeting their EEO responsibility, that the provisions of ASPR 7-103.18 are adhered to, and that the Chief, Procurement Management Staff, OL (PMS/OL), is notified of any EEO problems which may arise under Agency contracts.

6. In addition to the contractual coverage provided by the EEO clause in Section A of the General Provisions, all solicitations, requests for proposal, and requests for quotation, in excess of \$10,000, must contain certain representations concerning the offeror's status in the area of EEO. These are included as Attachments 3, 4, 5, and 6 and should be used as appropriate. If these representations are not contained in the solicitation or RFP, they must be obtained before a contract is executed.

7. In addition, each solicitation, written or oral, estimated to be for \$1,000,000 or more shall advise offerors that, prior to the award of a contract, the proposed contractor and his known first-tier subcontractors with proposed subcontracts of \$1,000,000 or more shall be subject to an EEO compliance review in accordance with Attachment 7. In these circumstances, the Contracting Officer will advise the Chief, PMS/OL, who will obtain the compliance review through the appropriate compliance agency prior to the award of the contract.

8. Contracting Officers are requested to review Executive Order 11246 (Attachment 2) and Section 12, Part 8, of the ASPR's to ensure the appropriate administration of EEO requirements under Agency contracts.

[Redacted Signature Box]

Michael W. Malanick
Director of Logistics

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Atts

CERTIFICATION OF NONSEGREGATED FACILITIES (1970 AUG)

(Applicable to contracts, subcontracts, and to agreements with applicants who are themselves performing Federally assisted construction contracts, exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause). By the submission of this bid, the bidder, offeror, applicant, or subcontractor certifies that he does not maintain or provide for his employees any segregated facilities at any of his establishments, and that he does not permit his employees to perform their services at any location under his control where segregated facilities are maintained. He certifies further that he will not maintain or provide for his employees any segregated facilities at any of his establishments, and that he will not permit his employees to perform their services at any location under his control where segregated facilities are maintained. The bidder, offeror, applicant, or subcontractor agrees that a breach of this certification is a violation of the Equal Opportunity clause in this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest-rooms and wash-rooms, restaurants and other eating areas, time-clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees, which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. He further agrees that (except where he has obtained identical certifications from proposed subcontractors for specific time periods) he will obtain identical certifications from proposed subcontractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the Equal Opportunity clause, that he will retain such certifications in his files, and that he will forward the following notice to such proposed subcontractors (except where the proposed subcontractors have submitted identical certifications for specific time periods):

NOTICE TO PROSPECTIVE SUBCONTRACTORS OF REQUIREMENT FOR CERTIFICATIONS OF NONSEGREGATED FACILITIES. A Certification of Nonsegregated Facilities must be submitted prior to the award of a subcontract exceeding \$10,000 which is not exempt from the provisions of the Equal Opportunity clause. The certification may be submitted either for each subcontract or

for all subcontracts during a period (i.e., quarterly, semi-annually, or annually).

NOTE: The penalty for making false statements in offers is prescribed in 18 U.S.C. 1001.

Attachment 4

PREVIOUS CONTRACTS AND COMPLIANCE REPORTS (1973 APR)

The offeror represents that he () has, () has not, participated in a previous contract or subcontract subject either to the Equal Opportunity clause herein or the clause originally contained in Section 301 of Executive Order No. 10925, or the clause contained in Section 201 of Executive Order No. 11114; that he () has, () has not, filed all required compliance reports; and that representations indicating submission of required compliance reports, signed by proposed subcontractors, will be obtained prior to subcontract awards. (The above representation need not be submitted in connection with contracts or subcontracts which are exempt from the clause.)

AFFIRMATIVE ACTION PROGRAM (1973 APR)

(The following representation shall be completed by each offeror whose offer is \$50,000 or more and who has 50 employees or more.) The offeror represents that he () has, () has not, developed and maintained at each of his establishments Equal Opportunity Affirmative Action Programs, pursuant to 41 CFR 60.2.

Attachment 6

EQUAL EMPLOYMENT COMPLIANCE (1973 APR)

By submission of this offer, the offeror represents that, except as noted below, up to the date of this offer no written notice such as a show cause letter, a letter indicating probable cause, or any other formal written notification citing specific deficiencies, has been received by the offeror from any Federal Government agency or representative thereof that the offeror or any of its divisions or affiliates or known first-tier subcontractors is in violation of any of the provisions of Executive Order 11246 of September 24, 1965, Executive Order No. 11375 of October 13, 1967, or rules and regulations of the Secretary of Labor (41 CFR, Chapter 60) and, specifically, as to not having an acceptable affirmative action program or being in noncompliance with any other aspect of the Equal Employment Opportunity Program. It is further agreed that should there be any change in the status of circumstances between this date and the date of expiration of this offer or any extension thereof, the Contracting Officer will be notified.

Attachment 7

PRE-AWARD ON SITE EQUAL OPPORTUNITY COMPLIANCE REVIEW
(1970 AUG)

In accordance with regulations of the Office of Federal Contract Compliance, 41 CFR 60.1, effective 1 July 1968, an award in the amount of \$1,000,000 or more will not be made under this solicitation unless the bidder and each of his known first-tier subcontractors (to whom he intends to award a subcontract of \$1,000,000 or more) are found, on the basis of a compliance review, to be able to comply with the provisions of the Equal Opportunity clause of this solicitation.